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Legal Representatives for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2025

ROBERT LEE PHIPPS  
2439 W. Vasser Drive  
Visalia CA 93277

**A C C U S A T I O N**

Respiratory Care Practitioner License No. 1809

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about May 10, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 1809 to Robert Lee Phipps (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2007, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are

1 to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of  
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,  
4 the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and  
6 revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of  
9 probationary conditions upon, a license issued under this chapter, for any of the following  
10 causes:

11 “(g) Conviction of a violation of any of the provisions of this chapter or of any  
12 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
13 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
14 violate any provision or term of this chapter or of any provision of Division 2 (commencing  
15 with Section 500).”

16 7. Section 3750.5(e) of the Code states:

17 “In addition to any other grounds specified in this chapter, the board may deny,  
18 suspend, or revoke the license of any applicant or license holder who has done any of the  
19 following:

20 “(e) Been committed or confined by a court of competent jurisdiction for  
21 intemperate use of or addiction to the use of any of the substances described in subdivisions  
22 (a), (b), and (c), in which event the court’s order of commitment or confinement is prima  
23 facie evidence of that commitment or confinement.”

24 8. California Code of Regulations, title 16, section 1399.370, states:

25 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
26 shall be considered to be substantially related to the qualifications, functions or duties of a  
27 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
28 perform the functions authorized by his or her license or in a manner inconsistent with the

1 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
2 those involving the following:

3 “(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting  
4 the violation of or conspiring to violate any provision or term of the Act.”

#### 5 COST RECOVERY

6 9. Section 3753.5, subdivision (a) of the Code states:

7 "In any order issued in resolution of a disciplinary proceeding before the board, the  
8 board or the administrative law judge may direct any practitioner or applicant found to have committed  
9 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and  
10 prosecution of the case."

11 10. Section 3753.7 of the Code states:

12 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include  
13 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,  
14 and service fees."

15 11. Section 3753.1 of the Code states:

16 "(a) An administrative disciplinary decision imposing terms of probation may include,  
17 among other things, a requirement that the licensee-probationer pay the monetary costs associated with  
18 monitoring the probation. "

#### 19 FIRST CAUSE FOR DISCIPLINE

20 (Confinement for intemperate use of alcohol)

21 12. Respondent is subject to disciplinary action under sections 3750(g),  
22 3750.5(e) and CCR 1399.370(a) in that on or about February 28, 2005, the District Court of the  
23 State of Washington ordered respondent to complete an approved two year alcohol treatment  
24 program.

25 13. On or about August 24, 2004, respondent was arrested for violating State of  
26 Washington Code section RCW:46.61.502, driving while under the influence and  
27 RCW:46.61.500(1), reckless driving. The circumstances are as follows:

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1                   A.     On or about August 24, 2004, at about 2020 hours, Washington State  
2 Patrol Trooper R.J. Hanson was advised of an erratic vehicle northbound on Interstate 5. The  
3 driver behind the vehicle phoned in a description and license plate number. Trooper Hanson  
4 observed the vehicle, and saw that the driver was weaving and went over the centerline several  
5 times. He activated his emergency light and the vehicle finally pulled to the shoulder and stopped.  
6 Trooper Hanson spoke with the driver, who identified himself as respondent with a California  
7 license. He observed that respondent's face was flushed, his speech was slow and slurred, and his  
8 eyes were bloodshot and watery. Respondent's finger coordination was very labored. Trooper  
9 Hanson inquired how much alcohol respondent had to drink, and respondent stated, "Nothing."  
10 Respondent's breath had a sweet odor. Trooper Hanson asked respondent to exit the car, and  
11 respondent had difficulty exiting the car and walking to the rear of the vehicle. He used the door  
12 and side of the car for support. Trooper Hanson noticed that respondent had urinated in his pants.

13                   B.     Respondent agreed to submit to voluntary field sobriety tests. Based on his  
14 poor performance on the tests, and his objective symptoms, Trooper Hanson arrested respondent  
15 for driving under the influence of alcohol in violation of State of Washington Code section  
16 RCW:46.61.502, and for a violation of RCW:46.61.500(1), reckless driving. Upon a search of the  
17 vehicle, Trooper Hanson saw an empty 375 ml vodka bottle under the driver's seat. Several beer  
18 bottles were in a cooler in the car. Trooper Hanson transported respondent to the Lewis County  
19 Jail for a breath/blood alcohol test, and at the jail, respondent was unsteady on his feet and ran into  
20 the wall as he walked into the room. Respondent then refused to submit to the breath/blood  
21 alcohol test.

22                   C.     On or about September 15, 2004, an Amended Complaint titled *State of*  
23 *Washington vs. Robert L. Phipps*, case no. C459588 was filed in the District Court of the State of  
24 Washington for Lewis County. Count I charged respondent with a violation of State of  
25 Washington Code section RCW:46.61.502, driving under the influence of alcohol. Count II  
26 charged respondent with a violation of State of Washington Code section RCW:46.61.500(1),  
27 reckless driving. On or about February 28, 2005, respondent signed an Acknowledgment and  
28 Waiver of Rights, and Stipulation to Admission of Police Reports as Sufficient Evidence of Guilt

1 in Case of Revocation. On or about February 28, 2005, an Order of Deferred Prosecution was  
2 filed. Respondent stipulated to the admissibility of the facts as contained in the written police  
3 report and further stipulated and agreed that those reports contain enough evidence for the Court to  
4 find him guilty of the pending charges beyond a reasonable doubt. The Court ordered that the  
5 prosecution in case no. C459588 is deferred pursuant to RCW 10.05 until three years after  
6 successful completion of an approved two year treatment program with the following conditions:  
7 attend and satisfactorily complete an alcohol program; pay all costs of diagnostic investigation,  
8 evaluation and treatment plan; abstain from the use of alcohol; remain law-abiding; do not use  
9 mood altering chemical or controlled substances except under the prescription of a physician;  
10 follow all reasonable recommendations of the alcoholism counselor including any follow-up  
11 program indicated in the Diagnostic Evaluation; do not operate a motor vehicle without a valid  
12 license and proof of liability insurance. For one year, respondent must have an ignition interlock  
13 device on his motor vehicle which will prevent operation when the breath sample provided has an  
14 alcohol concentration of 0.025 or more. Respondent shall be supervised by the Lewis Court  
15 Probation Office. He is required to pay \$1,757.50. The cash bail in this matter was exonerated.  
16 He was ordered to attend a victim's impact panel within ninety days of the date of the order.

17 14. Therefore, Respondent's license is subject to disciplinary action in that the  
18 District Court of the State of Washington's order requiring respondent to complete an approved  
19 two year alcohol treatment program is a "commitment" or "confinement" for intemperate use of  
20 alcohol pursuant to code section 3750.5(e).

#### 21 MATTERS IN AGGRAVATION

##### 22 1995 DUI Conviction

23 15. On or about May 5, 1995, respondent was arrested for a violation of  
24 Vehicle Code section 23152(a), driving under the influence of alcohol and/or drugs and Vehicle  
25 Code section 23152(b), driving while having a blood alcohol content above .08%. On or about  
26 July 24, 1995, upon his plea of nolo contendere, respondent was convicted of violating Vehicle  
27 Code section 23152(a).

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1989 DUI Conviction

16. On or about November 22, 1989, respondent was arrested for a violation of Vehicle Code section 23152(a), driving under the influence of alcohol and/or drugs and Vehicle Code section 23152(b), driving while having a blood alcohol content above .08%. On or about December 7, 1989, upon his plea of guilty, respondent was convicted of violating Vehicle Code section 23152(a).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 1809, issued to Robert Lee Phipps.
2. Ordering Robert Lee Phipps to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: May 15, 2006

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant